1. M/s. IBP Company Limited & Ors. Vs.
M/s. Kissan Service Centre & Others.
(D.B. Civil Special Appeal (writ) No.1012/1997)

2. M/s. IBP Company Limited & Ors. Vs.
M/s. Anand Service Station & Others.
(D.B. Civil Special Appeal (Writ) No.1013/1997)

September 18, 2007.

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE CHATRA RAM JAT

Mr. S. Kasliwal, for the appellants.

Mr. Ajeet Kumar Sharma, for the respondents.

BY THE COURT: (Oral)

Challenge in these appeals is to the order dated March 20, 1997 of the learned Single Judge whereby the orders dated January 18, 1997 of the appellant company terminating dealership of the respondents were declared as not sustainable.

2. Contextual facts depict that appellant company granted licence of retail outlet dealership for the sale of various products of the appellant company to the respondents and the respondents started selling petroleum products. The appellant company vide letter dated January 18, 1997 terminated the retail outlet dealership of the respondents.

3. We have heard learned counsel for the parties.

4. In the letter dated January 18, 1997 the appellant company indicated thus:-

> "Please be advised that as per clause 23 (g) & (i) of the said Dealership Agreement, your RO Dealership stands terminated forthwith."

5. Clause 23 of the agreement reads as under:-

> "23. Notwithstanding anything to the contrary herein before contained the company shall be entitled to terminate this Agreement forthwith and without notice upon or at any time after

the happening of any of the events following:-

(a) If the Dealer or the proprietor or any individual partner of the Dealer/s firm shall die or be adjudicated insolvent or upon dissolution of the firm for any reason whatsoever or if the Dealer/s being a Company go into liquidation, either voluntarily or otherwise or in the case of a Municipality if it is superseded by order of Government.

(b) If an attachment is levied by order of Court upon the said outfit or any goods for the time being stored upon the promises of the facilities.

(c) If the licencees for the storage of petroleum products upon the promises of the said outfit is/ are cancelled or revoked.

(d) If the Dealer/s for any reason other than the Company's default fail to maintain supply to the public for any period exceeding twenty four hours.

(e) If the Dealer/s fail to make payment of their outstanding within fourteen days of demand in writing by the Company.

(f) If the Dealer/s shall be guilty of a breach of any of the covenants and stipulations on their part contained in clause 11 hereto.

(g) If the Dealer/s shall commit or suffer to be committed any act which in the opinion of the Manager of the Company for the time being in New Delhi whose decision shall be final is prejudicial to the interest or good name of the Company or its products.

(h) Upon termination of any other agreement between the parties without prejudice to any other right or remedy reserved thereunder.

(i) If the Dealer fails to perform and observe any stipulation herein contained.

6. A bare look at clauses 23 (g) and (i) of the agreement demonstrates

that the appellant company is empowered to terminate the dealership only if the dealer commits or suffer to be committed any act which is prejudicial to the interest or good name of the company or its products or if the dealer fails to perform and observe any stipulation contained in the agreement. We however, do not notice any such stipulation in the letter dated January 18, 1997. The power of termination of dealership ought to have been exercised in a reasonable and fair manner and on the existence of relevant material establishing the breach of any of sub clauses of agreement. In our opinion the order of termination of dealership by a non-speaking order is unsustainable in the eye of law. The appellant company had to act in consonance with the principles of natural justice and merely because clause 23 entitled the appellant company to terminate the agreement forthwith and without notice did not imply that the power of termination could be invoked without disclosing the material sought to be used against the respondents before hand and without giving the respondents an opportunity to have their say on such material.

7. Since the orders dated January 18, 1997 of the appellant company were against the principles of natural justice, we find no error in the impugned order of learned Single Judge.

8. Resultantly, the instant Special Appeals being devoid of merits stand dismissed without any order as to costs.

(Chatra Ram Jat),J. (Shiv Kumar Sharma)J.

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